



MONTGOMERY COUNTY ETHICS COMMISSION

Rahul K. Goel
Chair

Steven Rosen
Vice Chair

April 12, 2019

Advisory Opinion 19-03-008

You have inquired whether it would be appropriate for a County employee to complete a reference questionnaire and submit it to a city in North Carolina with respect to a vendor and its performance of a contract with Montgomery County.

The County's Department of Finance contracts with a vendor for services relating to accounts payable software. A city in North Carolina issued a request for proposals (RFP). The vendor, in connection with the RFP, stated in an email to a contact person in the County that it needed three business references and requested the contact at Montgomery County to provide a reference for it. The city in North Carolina's "Reference Questionnaire" was provided along with the request. The request stipulated that the vendor did not need to see the answers as the answers could be sent directly to the city.

Section 19A-14(a) of the County's Public Ethics Law states that "[u]nless expressly authorized by regulation or as may be permitted under Section 19A-16 [alluding to limited allowances for solicitations to charities], a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection."

The question is whether 19A-14(a) of the ethics law bars the provision of a reference by the County to the city as requested by the vendor. The Ethics Commission concludes that 19A-14(a) does not bar the provision of the requested reference.

Public officials take many "intentional" actions in the course of their County employment that advance private interests without violating 19A-14(a). Awarding contracts or granting permits are examples of routine intentional acts by County officials that result in the advancement of private interests without violating ethics law or principles. Implicit in section 19A-14(a) is that the use of one's position to advance a private interest be an "inappropriate" use of position. And this view is supported by the second sentence of 19A-14(a) regarding routine constituent

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services. An elected official's attendance at an opening ceremony of a new enterprise, while in some senses is an intentional act advancing private interests, would be the type of activity that would fall into the category of "usual and customary" activity that would not be subject to the bar. This is not to say that a vendor is a constituent, but that the intended meaning of 19A-14(a) incorporates a notion that routine business, bereft of inappropriate bias or lack of impartiality, engaged in by County employees does not implicate 19A-14(a).

Where the lines are drawn though between what is appropriate use of position that advances private interests and what is inappropriate can be challenging, and consultation with the Ethics Commission is advisable, especially where the activity is not a routine one.

The Commission recently issued regulations that reflect on the issue. Ethics Commission regulation 19A.14.01.02.2 reads:

Endorsements, Letters of Recommendation – A public employee must not use or permit the use of any authority associated with public office in a manner that could reasonably be construed to imply that the employee's agency or the County sanctions or endorses the employee's personal activities or those of another. Letters of recommendation using official title may be issued only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom the employee has dealt in the course of County employment or whom the employee is recommending for County employment. An employee must not use or permit the use of his or her Government position or title or any authority associated with his or her public office to endorse any product, service or enterprise except:

- a. In furtherance of statutory authority to promote products, services or enterprises; or
- b. As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

While this language is not determinative as regards the question about being a reference for a contractor, the analogy between an employment reference and a business reference for a County vendor is inescapable. Mimicking the language of the regulation, the Commission does not view the provision of a reference as an endorsement but instead a reference based upon personal knowledge of the ability of a contractor with whom the employee has dealt in the course of County employment. The city's "Reference Questionnaire", has only questions about the contractor's performance with respect to the work for the party preparing the reference. This is to say, the form involves no endorsement, recommendation, or judgment concerning the contractor's suitability for whatever it is that the contractor is being considered for by the city. It is just the conveyance of views relating to the contractor's performance of work for the party filling out the questionnaire, in this case Montgomery County.

Under the circumstances presented, the Ethics Commission concludes that the provision of the reference would not violate 19A-14(a). The Commission notes that were the facts changed to suggest that the motivation for the issuance of the reference included the establishment of a

personal friendship between the contractor and the County employee who is issuing the reference, the answer could be different. The Ethics Commission was not presented with those facts in this case.

For the Commission:

A handwritten signature in blue ink, appearing to read 'Rahul K. Goel', written in a cursive style.

Rahul K. Goel, Chair